

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE: *EX PARTE* APPLICATION OF)
BLUE SKYE FINANCIAL PARTNERS)
S.À R.L. FOR AN ORDER UNDER 28)
U.S.C. § 1782 TO TAKE EXPEDITED)
DISCOVERY)

Case No. _____

DECLARATION OF SALVATORE CERCHIONE

I, Salvatore Cerchione, declare as follows:

1. I am the co-founder and managing partner at Blue Skye Financial Partners S.à r.l. (“Blue Skye”). Blue Skye is a European investment group and indirect minority shareholder of Associazione Calcio Milano S.p.A, which is the internationally known Italian football club A.C. Milan (“**AC Milan**”).

2. I have served in my role at Blue Skye since 2007.

3. I submit this declaration in support of the Application (“**Application**”) submitted by Blue Skye for an order under 28 U.S.C. § 1782 to take discovery from Elliott Management Corporation (“**Elliott**”) and RedBird Capital Partners (“**RedBird**”). In particular, Blue Skye seeks documents from Elliott and RedBird “for use in a proceeding in a foreign tribunal,” in particular, to be used in civil proceedings pending in the District Court of and in Luxembourg (“**Luxembourg Actions**”).

4. I have personal knowledge of the information set forth in this declaration based on my own communications and interactions with Elliott and RedBird and based on Blue Skye’s investigation of this matter. The exhibits attached hereto are true and correct copies of the original documents.

I. Relevant Parties and Entities

5. Blue Skye is a limited liability company established under the laws of Luxembourg. It is registered with the Luxembourg Trade and Companies Register under number B 193.016, and its registered office is located at 5, Côte d'Eich, L-1450 Luxembourg. Blue Skye has indirect ownership in AC Milan.

6. Elliott is a Delaware corporation and maintains its principal place of business here at 40 West 57th St., 4th Floor, New York City, New York, 10019. Elliott is an investment management firm with over \$51.5 billion of assets under management worldwide. Elliott controls two investment vehicles—King George Investments LLC (“King George”) and Genio Investments LLC (“Genio”), both Delaware limited liability companies—that hold an indirect ownership interest in AC Milan.

7. Redbird is a Delaware limited liability company and maintains a place of business here at 667 Madison Ave., Floor 16, New York City, New York, 10065. Redbird is a private investment firm with \$6 billion of assets under management that has entered a deal to acquire AC Milan from Elliott UK.

II. Rossoneri, Project Redblack and the Ownership of AC Milan

8. RedBird has reportedly entered into an agreement to purchase AC Milan through an improper transaction that is the subject of the Luxembourg Actions.

9. AC Milan is approximately 99.93% owned by Rossoneri Sport Investment Luxembourg S.à r.l. (“Rossoneri Sport”), a Luxembourg limited liability company.

10. Rossoneri Sport, in turn, is wholly owned by Project Redblack S.à. r.l. (“**Project Redblack**”), a Luxembourg limited liability company.

11. Project Redblack’s ownership is key to the Luxembourg Actions. It is majority owned by the two Elliott investment vehicles, Genio and King George, and minority owned by

Blue Skye. In particular, Project Redblack has issued 12,000 shares. Genio (3,447 Class A units) and King George (8,041 Class A units) hold a combined majority interest of 11,388 units of Class A shares. Blue Skye holds a minority interest of 512 Class B shares.

III. Project Redblack's Management

12. Project Redblack is operated by a Board of Managers, which consists of three managers—two appointed by Genio and King George, and the third appointed by Blue Skye.

13. Genio and King George appointed Jean-Marc McLean and Daniela Italia as Class A Managers. Blue Skye appointed Giovanni Caslini as the sole Class B Manager.

14. Accordingly, as to Project Redblack's ordinary business matters, the two managers appointed by Elliott's two investment vehicles could outvote the lone manager appointed by Blue Skye. But, as discussed below, they could not outvote the manager appointed by Blue Skye when addressing certain restricted matters ("**Restricted Matters**"), which required a unanimous vote of all three managers.

IV. Rossoneri Sport's Management

15. Rossoneri Sport is managed by a Board of Managers appointed by a resolution of the general meeting of shareholders. The Class A Shareholders are entitled to appoint three managers of Rossoneri Sport and the Class B Shareholders are entitled to appoint the two remaining managers. Project Redblack became the sole shareholder of Rossoneri Sport.

16. The Board of Managers was thus composed of the following five managers until May 17, 2022: Victor Schuh (Class A); Afred Izak Gosling (Class A); Giovanni Caslini (Class A); Jean-Marc McLean (Class B); and Elliott Greenberg (Class B).

V. Rossoneri Sport's Initial Purchase of AC Milan through Financing Given to It by Project Redblack, and Rossoneri's Pledge of AC Milan's shares to Project Redblack to Guarantee to Repayment of that Financing.

17. In April 2017, Project Redblack financed Rossoneri Sport's acquisition of AC Milan via an acquisition facility agreement (the "**AFA**").

18. Under the AFA, Project Redblack agreed to finance Rossoneri Sport up to €202 million in return for guarantees of its full repayment.

19. Accordingly, Rossoneri Sport granted a first-ranking pledge to Project Redblack of its AC Milan shares ("**Pledge**").

20. To be able to finance its obligations under the AFA, Project Redblack issued hybrid credit instruments called "Tracking Preferred Equity Certificates" (hereinafter the "**TPECs**").

21. The TPECs creditor, Luxembourg Investment Company 159, subscribed to 10,735,567 Class B TPECs for €10,735,567. Blue Skye subscribed to 10 Class A-2 TPECs. Other creditors have also subscribed to Class A-1 TPECs for a total amount of €240,724,434.

22. To meet AC Milan's cash flow requirements, Project Redblack thereafter issued new TPECs. Thus, as of today, Project Redblack has issued a total number of 733,728,971 TPECs, which amount to €733,728,971.

23. Project Redblack also issued associated interest-free loans ("**Loans**").

24. As a result, Rossoneri Sport is now liable to Project Redblack for a total amount of €1,231,048,383.

VI. Elliott Negotiates an Improper “Behind Closed Doors” Sale of AC Milan in Violation of Blue Skye’s Rights as a Minority Shareholder of Project Redblack and in Violation of Project Redblack’s Articles of Association

25. On June 1, 2022, AC Milan issued on its website a press release stating that Redbird had “reached a definitive agreement” to acquire AC Milan by September 2022.¹ This followed weeks of rumors (since mid-April 2022) of an imminent sale, relayed by the press, without Blue Skye ever receiving any information on this sale.

26. More problematic, the manager appointed by Blue Skye to the Project Redblack Board of Managers, Caslini, was denied access to documentation concerning the sales process, the proposed sale and the definitive agreement under which RedBird would purportedly acquire AC Milan.

27. After Caslini insisted on receiving that information in his capacity of, and to fulfill his obligations as, manager of Rossoneri Sport, he was suddenly removed from his position on May 17, 2022.

28. To make matters worse, in April 2022, Elliott, through its partner Gordon Singer, had indicated that Elliott was focused on maximizing value for AC Milan and that Blue Skye would be privy to any sale.

29. The proposed deal violates Blue Skye’s rights as a minority shareholder of Project Redblack and will cause serious harm to Blue Skye.

30. To enable the transfer of AC Milan’s shares to RedBird, Project Redblack would need to release Rossoneri Sport from its debt owed to Project Redblack and also release Rossoneri Sport from its associated Pledge of AC Milan’s shares to Project Redblack as a guarantee of

¹ See RedBird Capital Partners Enters Into Agreement With Elliott Advisors To Acquire AC Milan, ACMilan.com, <https://www.acmilan.com/en/news/articles/club/2022-06-01/redbird-capital-partners-enters-into-agreement-with-elliott-advisors-to-acquire-ac-milan>.

repayment of the AFA and Loans. Project Redblack would thus remain saddled with its own debt to the TPEC creditors while losing its recourse for payment through a guarantee via the Pledge.

31. This is particularly troublesome because the purported transfer price is insufficient to meet the amount owed by Rossoneri Sport to Project Redblack. From what Blue Skye understands, Rossoneri agreed to sell AC Milan to RedBird for approximately €1,228,418,010.20. Yet Rossoneri owes Project Redblack €1,231,048,383.

32. Furthermore, the deal contemplates that Rossoneri Sport will loan RedBird up to €550 million to finance the sale. Should RedBird default, Project Redblack will be without the protections afforded by the Pledge, and thus may suffer a loss of half of its investment.

33. Although Elliott may suggest that this deal is in Project Redblack's best interests, the facts suggest otherwise. In particular, Elliott had purportedly engaged in negotiations with Investcorp, a global asset manager based in Bahrain with \$41 billion in assets under management. As of May 2022, Investcorp would have paid an *immediate cash payment* for the club, with no seller's loan, no risk of default, and no destruction of Project Redblack's ability to recover payments made under the AFA and the Loans.

34. In addition, Elliott's "behind closed doors" sale would violate Article 13 of the Articles of Association of Project Redblack ("**Articles**"). *See* Articles of Association, attached hereto as Exhibit A.

35. Under the Articles, any decisions regarding Restricted Matters, such as the approval of RedBird's purported acquisition of AC Milan, require the unanimous vote of all three managers of Project Redblack. *Id.* at 7-8.

36. Restricted Matters under the Articles of Association explicitly include "any transaction to be entered into by and between [Project Redblack] and any of its Shareholders,

TPECs holders or any other subsidiary or affiliate of that Shareholder or TPECs holder.” *Id.* at 8. In other words, transactions with subsidiaries of Project Redblack’s shareholders are “Restricted Matters.”

37. Rossoneri Sport is a subsidiary of Project Redblack’s shareholders (King George, Genio, and Blue Skye). The decision to waive Rossoneri Sport’s debt obligations to Project Redblack and to release the Pledge are thus “Restricted Matters” requiring a unanimous vote of Project Redblack’s board of managers.

38. No such vote was held.

39. The need for a unanimous vote of the managers to release the debt and Pledge was brought to the attention of the Class A managers of Project Redblack, McLean and Italia, who were appointed by Elliott.

40. They incorrectly contended that their signatures alone were sufficient to approve the necessary releases of Project Redblack’s debt and the Pledge (based on certain terms that, according to them, would allow them to avoid relevant terms of the Articles) and that a unanimous vote of all three of the Project Redblack managers was not necessary.

41. Elliott thus moved forward without ever disclosing the proposed sale to Caslini, a Project Redblack Class B Manager, and in violation of the Articles and Blue Skye’s rights as a minority shareholder.

VII. Blue Skye Has Commenced Civil Proceedings in Luxembourg

42. Blue Skye engaged counsel at Bonn Steichen & Partners S.C.S a law firm in Luxembourg, to commence the Luxembourg Actions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 24, 2022.



Salvatore Cerchione